IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1675 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NEW INDIA ASSURANCE CO. LTD - Appellant(s)
Versus
DIVYAKANT PITAMBARBHAI BORIYA & 1 - Defendant(s)

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Appearance :

MR CHIRAYU MEHTA for MS MEGHA JANI for Appellant(s) : 1,
MS NISHA M THAKORE for Defendant(s) : 1,
MR KV SHELAT for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 11/09/2006

ORAL JUDGMENT

1. This is an appeal filed by the Insurance Company under Section 173 of the Motor Vehicles Act [hereinafter referred to as the “Act”] to challenge the award made under Section 140 of the Act, by passing order below Exh.

15 dated 24th December, 2003. By it, the Tribunal has allowed the application and has directed the appellant and respondent no. 2 to pay to respondent no. 1 an amount of Rs.25,000=00 by way of interim compensation with interest at the rate of 9% per annum from the date of application till the realization. The Tribunal has further directed that upon depositing of the amount by the appellant, 60% thereof, should be deposited in the name of respondent no. 1 for a period of five years in any Nationalized Bank and the balance 40% of the amount to be paid to respondent no. 1.

2. It is the say of the appellant that the insured has played fraud upon the Insurance Company as well as on the Tribunal, since it has tampered with the original policy by erasing the time at which the proposal for renewal of the insurance was accepted by the Insurance Company i.e., the appellant. However, such submission does not deserve any countenance at this stage since it is a question of fact which can be threshed out on the basis of the detailed evidence that may be lead by the parties during the proceedings under Section 166 of the Act. At this stage, I cannot express any opinion on the said document. P*rima facie* when the Tribunal is satisfied that there is insurance of the offending vehicle and the injuries have been suffered by respondent no. 1 in a vehicular accident, the Tribunal is within its bounds to

award interim compensation under Section 140 of the Act.

3. Having heard Mr. Chirayu Mehta learned advocate for the appellant, Ms. Nisha Thakore learned advocate for respondent no. 1 and Mr. K.V. Shelat for respondent no. 2, I do not find any cogent reason to interfere with the said order of the Tribunal. Hence, this appeal deserves dismissal. However, to see that interest of appellant is not prejudice, the following directions are required to be given.

3.1. The original claimant i.e., respondent no. 1 shall file an undertaking before the Tribunal within four weeks of the service of this order to the effect that the main claim petition shall not be abandoned, shall not be withdrawn and shall not be permitted to be dismissed for default or for any other cause, and that the claimant shall obtain a decision on merits in the said claim petition. The amount awarded under the impugned order shall be adjusted against the final award in the main claim petition.

4. The Tribunal is directed to dispose of the main claim petition within a period of one year from the date of receipt of the writ of this Court.

5. Subject to the observations and directions

herein-above, the above appeal is dismissed with no order as to costs.

6. The amount deposited in the appeal, if any, with the Registry is directed to be transmitted to the Tribunal forthwith i.e. not later than 20th September, 2006.

7. The R & P to be re-transmitted to the Tribunal forthwith.

[Akshay H. Mehta, J.]

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